

Senate Engrossed

FILED

**JANICE K. BREWER
SECRETARY OF STATE**

State of Arizona
Senate
Forty-eighth Legislature
First Regular Session
2007

CHAPTER 136

SENATE BILL 1423

AN ACT

AMENDING SECTION 9-463.05, ARIZONA REVISED STATUTES; RELATING TO MUNICIPAL
DEVELOPMENT FEES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 9-463.05, Arizona Revised Statutes, is amended to
3 read:

4 9-463.05. Development fees; imposition by cities and towns;
5 infrastructure improvements plan; annual report;
6 limitation on actions; definition

7 A. A municipality may assess development fees to offset costs to the
8 municipality associated with providing necessary public services to a
9 development, INCLUDING THE COSTS OF INFRASTRUCTURE, IMPROVEMENTS, REAL
10 PROPERTY, ENGINEERING AND ARCHITECTURAL SERVICES, FINANCING, OTHER CAPITAL
11 COSTS AND ASSOCIATED APPURTENANCES, EQUIPMENT, VEHICLES, FURNISHINGS AND
12 OTHER PERSONALTY.

13 B. Development fees assessed by a municipality under this section are
14 subject to the following requirements:

15 1. Development fees shall result in a beneficial use to the
16 development.

17 2. Monies received from development fees assessed pursuant to this
18 section shall be placed in a separate fund and accounted for separately and
19 may only be used for the purposes authorized by this section. MONIES
20 RECEIVED FROM A DEVELOPMENT FEE IDENTIFIED IN AN INFRASTRUCTURE IMPROVEMENTS
21 PLAN ADOPTED OR AMENDED PURSUANT TO SUBSECTION D OF THIS SECTION SHALL BE
22 USED TO PROVIDE THE SAME CATEGORY OF NECESSARY PUBLIC SERVICE FOR WHICH THE
23 DEVELOPMENT FEE WAS ASSESSED. Interest earned on monies in the separate fund
24 shall be credited to the fund.

25 3. The schedule for payment of fees shall be provided by the
26 municipality. The municipality shall provide a credit toward the payment of
27 a development fee for the required dedication of public sites, and
28 improvements ~~provided by the developer for which that development fee is~~
29 ~~assessed~~ AND OTHER NECESSARY PUBLIC SERVICES INCLUDED IN THE INFRASTRUCTURE
30 IMPROVEMENTS PLAN AND FOR WHICH A DEVELOPMENT FEE IS ASSESSED, TO THE EXTENT
31 THE PUBLIC SITES, IMPROVEMENTS AND NECESSARY PUBLIC SERVICES ARE PROVIDED BY
32 THE DEVELOPER. The developer of residential dwelling units shall be required
33 to pay development fees when construction permits for the dwelling units are
34 issued, OR AT A LATER TIME IF SPECIFIED IN A DEVELOPMENT AGREEMENT PURSUANT
35 TO SECTION 9-500.05. IF A DEVELOPMENT AGREEMENT PROVIDES FOR FEES TO BE PAID
36 AT A TIME LATER THAN THE ISSUANCE OF CONSTRUCTION PERMITS, THE DEFERRED FEES
37 SHALL BE PAID NO LATER THAN FIFTEEN DAYS AFTER THE ISSUANCE OF A CERTIFICATE
38 OF OCCUPANCY. THE DEVELOPMENT AGREEMENT SHALL PROVIDE FOR THE VALUE OF ANY
39 DEFERRED FEES TO BE SUPPORTED BY APPROPRIATE SECURITY, INCLUDING A SURETY
40 BOND, LETTER OF CREDIT OR CASH BOND.

41 4. The amount of any development fees assessed pursuant to this
42 section must bear a reasonable relationship to the burden imposed upon the
43 municipality to provide additional necessary public services to the
44 development. The municipality, in determining the extent of the burden
45 imposed by the development, shall consider, among other things, the

1 contribution made or to be made in the future in cash or by taxes, fees or
2 assessments by the property owner towards the capital costs of the necessary
3 public service covered by the development fee.

4 5. If development fees are assessed by a municipality, such fees shall
5 be assessed in a ~~non-discriminatory~~ NONDISCRIMINATORY manner.

6 6. In determining and assessing a development fee applying to land in
7 a community facilities district established under title 48, chapter 4,
8 article 6, the municipality shall take into account all public infrastructure
9 provided by the district and capital costs paid by the district for necessary
10 public services and shall not assess a portion of the development fee based
11 on the infrastructure or costs.

12 C. A municipality shall give at least sixty days' advance notice of
13 intention to assess a new or ~~increased~~ MODIFIED development fee and shall
14 release to the public a written report ~~including all~~ THAT IDENTIFIES THE
15 METHODOLOGY FOR CALCULATING THE AMOUNT OF THE DEVELOPMENT FEE, EXPLAINS THE
16 RELATIONSHIP BETWEEN THE DEVELOPMENT FEE AND THE INFRASTRUCTURE IMPROVEMENTS
17 PLAN, INCLUDES documentation that supports the assessment of a new or
18 ~~increased~~ MODIFIED development fee AND IDENTIFIES ANY INDEX OR INDICES TO BE
19 USED FOR AUTOMATIC ADJUSTMENT OF THE DEVELOPMENT FEE PURSUANT TO SUBSECTION
20 F OF THIS SECTION AND THE TIMING OF THOSE ADJUSTMENTS. The municipality
21 shall conduct a public hearing on the proposed new or ~~increased~~ MODIFIED
22 development fee at any time after the expiration of the sixty day notice of
23 intention to assess a new or ~~increased~~ MODIFIED development fee and at least
24 ~~fourteen~~ THIRTY days prior to the scheduled date of adoption of the new or
25 ~~increased~~ MODIFIED fee by the governing body. A development fee assessed
26 pursuant to this section shall not be effective until ~~ninety~~ SEVENTY-FIVE
27 days after its formal adoption by the governing body of the municipality.
28 Nothing in this subsection shall affect any development fee adopted prior to
29 July 24, 1982.

30 D. BEFORE THE ASSESSMENT OF A NEW OR MODIFIED DEVELOPMENT FEE, THE
31 GOVERNING BODY OF THE MUNICIPALITY SHALL ADOPT OR AMEND AN INFRASTRUCTURE
32 IMPROVEMENTS PLAN. THE MUNICIPALITY SHALL CONDUCT A PUBLIC HEARING ON THE
33 INFRASTRUCTURE IMPROVEMENTS PLAN AT LEAST THIRTY DAYS BEFORE THE ADOPTION OR
34 AMENDMENT OF THE PLAN. THE MUNICIPALITY SHALL RELEASE THE PLAN TO THE
35 PUBLIC, MAKE AVAILABLE TO THE PUBLIC THE DOCUMENTS USED TO PREPARE THE PLAN
36 AND PROVIDE PUBLIC NOTICE AT LEAST SIXTY DAYS BEFORE THE PUBLIC HEARING,
37 SUBJECT TO THE FOLLOWING:

38 1. AN INFRASTRUCTURE IMPROVEMENTS PLAN MAY BE ADOPTED CONCURRENTLY
39 WITH THE REPORT REQUIRED BY SUBSECTION C OF THIS SECTION, AND THE
40 MUNICIPALITY MAY PROVIDE FOR AND SCHEDULE THE NOTICES AND HEARINGS REQUIRED
41 BY THIS SUBSECTION TOGETHER WITH THE NOTICES AND HEARINGS REQUIRED BY
42 SUBSECTION C OF THIS SECTION.

43 2. A MUNICIPALITY MAY AMEND AN INFRASTRUCTURE IMPROVEMENTS PLAN
44 WITHOUT A PUBLIC HEARING IF THE AMENDMENT ADDRESSES ONLY ELEMENTS OF
45 NECESSARY PUBLIC SERVICES THAT ARE INCLUDED IN THE EXISTING INFRASTRUCTURE

1 IMPROVEMENTS PLAN. THE MUNICIPALITY SHALL PROVIDE PUBLIC NOTICE OF THOSE
2 AMENDMENTS AT LEAST FOURTEEN DAYS IN ADVANCE OF THEIR EFFECTIVE DATE.

3 E. FOR EACH NECESSARY PUBLIC SERVICE THAT IS THE SUBJECT OF A
4 DEVELOPMENT FEE, THE INFRASTRUCTURE IMPROVEMENTS PLAN SHALL:

5 1. ESTIMATE FUTURE NECESSARY PUBLIC SERVICES THAT WILL BE REQUIRED AS
6 A RESULT OF NEW DEVELOPMENT AND THE BASIS FOR THE ESTIMATE.

7 2. FORECAST THE COSTS OF INFRASTRUCTURE, IMPROVEMENTS, REAL PROPERTY,
8 FINANCING, OTHER CAPITAL COSTS AND ASSOCIATED APPURTENANCES, EQUIPMENT,
9 VEHICLES, FURNISHINGS AND OTHER PERSONALTY THAT WILL BE ASSOCIATED WITH
10 MEETING THOSE FUTURE NEEDS FOR NECESSARY PUBLIC SERVICES AND ESTIMATE THE
11 TIME REQUIRED TO FINANCE AND PROVIDE THE NECESSARY PUBLIC SERVICES.

12 F. A MUNICIPALITY MAY AUTOMATICALLY ADJUST A DEVELOPMENT FEE ON AN
13 ANNUAL BASIS WITHOUT A PUBLIC HEARING IF THE ADJUSTMENT IS BASED ON A
14 NATIONALLY RECOGNIZED INDEX APPLICABLE TO THE COST OF THE NECESSARY PUBLIC
15 SERVICE THAT IS THE SUBJECT OF THE DEVELOPMENT FEE AND THE ADJUSTMENT
16 MECHANISM IS IDENTIFIED IN THE REPORT REQUIRED BY SUBSECTION C OF THIS
17 SECTION. THE MUNICIPALITY SHALL PROVIDE PUBLIC NOTICE OF THOSE ADJUSTMENTS
18 AT LEAST THIRTY DAYS IN ADVANCE OF THEIR EFFECTIVE DATE.

19 ~~D.~~ G. Each municipality that assesses development fees shall submit
20 an annual report accounting for the collection and use of the fees. The
21 annual report shall include the following:

22 1. The amount assessed by the municipality for each type of
23 development fee.

24 2. The balance of each fund maintained for each type of development
25 fee assessed as of the beginning and end of the fiscal year.

26 3. The amount of interest or other earnings on the monies in each fund
27 as of the end of the fiscal year.

28 4. The amount of development fee monies used to repay:

29 (a) Bonds issued by the municipality to pay the cost of a capital
30 improvement project that is the subject of a development fee assessment.

31 (b) Monies advanced by the municipality from funds other than the
32 funds established for development fees in order to pay the cost of a capital
33 improvement project that is the subject of a development fee assessment.

34 5. The amount of development fee monies spent on each capital
35 improvement project that is the subject of a development fee assessment and
36 the physical location of each capital improvement project.

37 6. The amount of development fee monies spent for each purpose other
38 than a capital improvement project that is the subject of a development fee
39 assessment.

40 ~~E.~~ H. Within ninety days following the end of each fiscal year, each
41 municipality shall submit a copy of the annual report to the city
42 clerk. Copies shall be made available to the public on request. The annual
43 report may contain financial information that has not been audited.

44 ~~F.~~ I. A municipality that fails to file the report required by this
45 section shall not collect development fees until the report is filed.

1 J. ANY ACTION TO COLLECT A DEVELOPMENT FEE SHALL BE COMMENCED WITHIN
2 TWO YEARS AFTER THE OBLIGATION TO PAY THE FEE ACCRUES.

3 K. FOR THE PURPOSES OF THIS SECTION, "INFRASTRUCTURE IMPROVEMENTS
4 PLAN" MEANS ONE OR MORE WRITTEN PLANS THAT INDIVIDUALLY OR COLLECTIVELY
5 IDENTIFY EACH PUBLIC SERVICE THAT IS PROPOSED TO BE THE SUBJECT OF A
6 DEVELOPMENT FEE AND OTHERWISE COMPLIES WITH THE REQUIREMENTS OF THIS SECTION,
7 AND MAY BE THE MUNICIPALITY'S CAPITAL IMPROVEMENTS PLAN.

8 Sec. 2. Applicability

9 Section 9-463.05, Arizona Revised Statutes, as amended by this act,
10 applies to development fees adopted or amended on or after the effective date
11 of this act and shall not affect development fees duly adopted or amended
12 before the effective date of this act.

APPROVED BY THE GOVERNOR APRIL 24, 2007.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 24, 2007.